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8 **UNITED STATES DISTRICT COURT**
9 **DISTRICT OF NEVADA**
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11 UNITED STATES OF AMERICA,
12
13 Plaintiff,

14 v.

CASE NO. 2:16-CR-00291-GMN-PAL

15 JOHN FORD EPPS,
16
17 Defendant.

**MOTION AND ORDER FOR LEAVE TO
OBTAIN A PRE-PLEA PRESENTENCE
REPORT**

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19 Comes now the Defendant JOHN FORD EPPS, by and through his counsel of record, John
20 George, Esq., and respectfully moves this Court for an order directing the United States Probation
21 Office to prepare a Pre-Plea Presentence Report for the limited purpose of determining Mr.Epps'
22 criminal history. In support hereof, Mr. Epps represents that the purpose of the report would be
23 to assist Defendant Epps in determining the potential consequences of entering a plea and to
24 confirm that he has properly recollected his criminal history. Preparation of the requested report
25 would assist Defendant Epps and counsel in this matter.

26 **MEMORANDUM OF POINTS AND AUTHORITIES**

27 The preparation and use of a presentence reports is governed by 18 U.S.C. § 3552 and
28 Rule 32 of the Federal Rules of Criminal Procedure. The text of Subparagraph (e) to Rule 32

lends support for the position that Rule 32 permits the preparation of a pre-plea presentence report prior to a plea agreement. Rule 32(e)(1) reads as follows:

(e) Disclosing the Report and Recommendation.

- (1) Time to Disclose. Unless the defendant has consented in writing, the probation officer must not submit a presentence report to the court or disclose its contents to anyone until the defendant has pleaded guilty or nolo contendere, or has been found guilty.

According to its language, Subparagraph (e)(1) protects against non-consensual disclosure of a presentence report to a court or to anyone else prior to a defendant's plea of guilty or a finding of guilt. The protection against pre-plea disclosure necessarily suggests that the creation of a pre-plea presentence report is permitted.

The pertinent portion of Rule 32 has been modified on several occasions. The legislative history to the changes is informative. The 1989 amendments to Rule 32(c)(1) made it the functional equivalent of current Rule 32(e)(1). The Advisory Committee Notes to the 1989 Amendments indicated the purpose of the provision:

In amending [then] subdivision (c)(1), the Committee conformed the rule to the current practice in some courts: i.e., to permit the defendant and the prosecutor to see a presentence report prior to a plea of guilty if the court, with written consent of the defendant, receives the report at that time. The amendment permits, but does not require, disclosure of the report with the written consent of the defendant.

Fed. R. Civ. P. 32, Advisory Committee Notes, 1989 Amendments.

This history indicates that the probation department, under some circumstances, may prepare a presentence report prior to a plea of guilty. This interpretation also gives meaning to Rule 32(e)(1), which otherwise makes no sense. Where such a report is prepared, probation may disclose it to the government and defendant and with consent to the court, prior to a plea of guilty. In this manner, a defendant can obtain critical information upon which to decide whether to enter into a plea negotiation.

Defendant Epps is contemplating a plea offer extended by the government in this matter. There is some urgency in this request as Defendant Epps must decide pretty soon. Material to this decision is the determination as to his criminal history.

1 It is true that the Court may not participate in plea discussions, nor may the Court force
2 Defendant Epps to submit to an interview with probation in violation of his 5th Amendment right
3 against self-incrimination. Similarly, the Court may not force the government to reveal its
4 evidence at an earlier stage than might otherwise be required. However, the Court does have the
5 discretion to order the probation office to prepare a criminal history of Defendant Epps. The
6 compilation of such a criminal history would serve the ends of justice and would not be unduly
7 burdensome under the circumstances. It would not violate Defendant Epps' 5th Amendment rights
8 or force the Government to reveal additional evidence. Defendant Epps' criminal history is a
9 matter of public record and its impact upon sentencing is ordinarily fairly straightforward.
10 Therefore, the compilation of such information prior to a guilty plea, and upon specific request by
11 the defendant, would not give rise to concerns that the Court is improperly participating in plea
12 negotiations.

13 For the foregoing reasons, Defendant Epps moves this Court to order the United States
14 Probation Office to conduct a pre-plea presentence investigation for the limited purpose of
15 determining Defendant Epps' criminal history.

16 Dated this 7th day of September, 2017.

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18 /s/John George
19 JOHN GEORGE, ESQ.
20 Nevada Bar No. 12380
21 Counsel for John Ford Epps
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12 UNITED STATES DISTRICT COURT
13 DISTRICT OF NEVADA

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15 UNITED STATES OF AMERICA,
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17 Plaintiff,
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19 v.
20 JOHN FORD EPPS
21
22 Defendant.

Case No. 2:16-CR-00291-GMN-PAL

ORDER ON MOTION FOR LEAVE TO
OBTAIN A PRE-PLEA PRESENTENCE
REPORT

23 Defendant JOHN FORD EPPS seeks leave for the preparation of a pre-plea presentence
24 report for the limited purpose of determining Mr. Epps' criminal history to assist in finalizing the
25 parties' plea negotiations. The compilation of such a criminal history would serve the ends of
26 justice and would not be unduly burdensome under the circumstances.

27 Accordingly, and for the foregoing reasons,

28 IT IS HEREBY ORDERED that Defendant John Ford Epps Motion for a Pre-Plea
Presentence Report for a determination of criminal history is GRANTED.

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1 **IT IS FURTHER ORDERED** that the United States Probation Office shall prepare and
2 provide to the Court by no later than November 8, 2017, a Pre-Plea Presentence Investigation
3 Report with the guideline calculation requested for Defendant John Ford Epps's criminal history
4 only.

5 **DATED** this 11 day of September, 2017.

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9 Gloria M. Navarro, Chief Judge
10 United States District Court
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